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8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION
12

13 IN RE CALIFORNIA BAIL BOND
ANTITRUST LITIGATION

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15 THIS DOCUMENT RELATES TO:
16 All Actions
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Master Case No. 4:19-CV-00717-JST

**PLAINTIFFS' ADMINISTRATIVE
MOTION TO SET A BRIEFING
SCHEDULE AND PAGE LIMITS
REGARDING RESPONSES TO THE
SECOND CONSOLIDATED AMENDED
COMPLAINT AND MOTION TO LIFT
DISCOVERY STAY**

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Dated: May 18, 2020

By: /s/ Dean M. Harvey

Interim Class Counsel

1 **I. INTRODUCTION**

2 Pursuant to Local Rule 7-11, Plaintiffs Shonetta Crain and Kira Monterrey respectfully
3 move the Court to set a briefing schedule and page limits regarding Defendants’ anticipated
4 motions to dismiss the Second Consolidated Amended Complaint (“SCAC”; Dkt. 94), and
5 Plaintiffs’ Motion to Lift the Discovery Stay (Dkt. 95). Plaintiffs and Defendants have conferred
6 regarding these issues, but could reach agreement only on the schedule for Defendants’
7 anticipated motions to dismiss. Declaration of Dean M. Harvey (“Harvey Decl.”), ¶ 2 and Ex. A,
8 filed herewith. On the remaining issues, Defendants insist that their only limitations should be as
9 set forth in the Local Rules. *Id.*, Ex. A. This would permit up to 1,820 pages of briefing on the
10 motions to dismiss alone. Plaintiffs submit this motion to request the Court’s guidance.

11 **II. BACKGROUND**

12 Following the filing of the SCAC on May 13, 2020, Plaintiffs met and conferred with
13 Defendants, and Defendants said all of them intended to move to dismiss the SCAC, and they
14 would oppose Plaintiffs’ Motion to Lift the Discovery Stay. Harvey Decl., ¶ 2. The parties
15 agreed on the following briefing schedule for Defendants’ anticipated motions to dismiss:
16 opening briefs would be due on June 12, 2020; Plaintiffs’ consolidated opposition brief would be
17 due on July 13, 2020; and Defendants’ reply briefs would be due on August 3, 2020. *Id.*, Ex. A at
18 3 (May 15, 2020 email from Beatriz Mejia confirming agreement on briefing schedule). The
19 parties attempted to, but could not, reach agreement on page limits for the motions to dismiss, a
20 briefing schedule for Plaintiffs’ Motion to Lift the Discovery Stay, or page limits regarding
21 Plaintiffs’ Motion to Lift the Discovery Stay. *Id.* ¶ 2 and Ex. A at 1-3 (May 15, 2020 emails from
22 Dean Harvey and David Houska). Plaintiffs suggested that the parties submit a joint filing with
23 one page per side and ask the Court to choose. *Id.* at 3 (May 15, 2020 email from Dean Harvey).
24 Defendants refused, and said they would instead proceed under the Local Rules, which would
25 provide up to 1,820 pages of briefing on the motions to dismiss (25 pages for each of 28
26 Defendants for opening and opposing briefs, and another 15 pages for each of 28 Defendants for
27 reply briefs). *Id.* at 2 (email from David Houska). Defendants also said they “do not anticipate”
28 using more than 75 pages in their opening briefs, *id.*, which would result in a total of 200 or more

1 pages of briefing. *Id.*

2 **III. PAGE LIMITS REGARDING FORTHCOMING MOTIONS TO DISMISS**

3 The remaining pleading issues following the Court’s April 13, 2020 Order Granting in
4 Part and Denying in Part Motions to Dismiss (“MTD Order”; Dkt. 91) should not require
5 anywhere near the number of pages Defendants intend to file. In the first round of Defendants’
6 motions to dismiss, the Court provided 30 pages for a consolidated brief regarding arguments
7 common to all Defendants, another 30 pages for Defendants to address issues relevant to certain
8 Defendants, and two 15-page replies. (Dkt. 27.) This was adequate for the parties to provide the
9 relevant factual background and argument regarding: five different immunity defenses, the
10 statutes of limitations, the plausibility of the alleged conspiracy, and whether Plaintiffs alleged
11 sufficient facts about how each Defendant joined the alleged conspiracy. The MTD Order
12 resolved all common issues, and resolved the sufficiency of alleged conspiracy participation with
13 respect to the California Bail Agents Association and the Individual Defendants. (Dkt. 91 at 26 –
14 28.) With respect to the remaining Defendants, the Court granted Plaintiffs leave to amend to
15 better explain their participation in the alleged conspiracy. (Dkt. 91 at 33.)

16 Plaintiffs propose that the Court provide Defendants with the same number of pages to
17 brief individual Defendant issues that the Court provided in the first round of motions to dismiss:
18 a 30 page opening brief and a 15 page reply. (*See* Dkt. 27.) (After the MTD Order, there are no
19 longer any pleading issues common to all Defendants.) This should be more than adequate, since
20 the earlier opening brief for certain Defendants devoted 8 pages to conspiracy participation (Dkt.
21 58 at ECF 14-15, 18-23), and their reply brief devoted another 7 pages to this issue (Dkt. 74 at
22 ECF 4-7, 9-11), for a total of 15 pages. Thus, Plaintiffs’ proposal of a total of 45 pages would
23 provide them *three times* the pages they previously used.

24 Defendants intend to spend substantially more pages briefing Defendant-specific
25 plausibility than they spent to brief *everything* from their first set of motions to dismiss. This is
26 excessive. Defendants’ only justification is that Plaintiffs provide more factual allegations in the
27 SCAC. Harvey Decl., Ex. A, at 1-2 (May 15, 2020 email from David Houska). But while the
28 SCAC is certainly longer than the Consolidated Amended Complaint (Dkt. 46), Defendant-

specific allegations are organized, consistent, and uniform. For instance, nearly half of the SCAC is devoted to individual Surety Defendants. (Dkt. 94, ¶¶ 156 – 357.) For each, Plaintiffs provide: (1) background and market entry; (2) participation in the rate filing component of the conspiracy; (3) loss ratios showing that the prices charged by that surety cannot be explained be independent, competitive decision-making; (4) participation in trade associations that joined the conspiracy; (5) participation in the rebate-suppression component of the conspiracy; (6) application of economic plus factors; and (7) surety statements evidencing participation in the conspiracy. These allegations are largely either sufficient for all of the Surety Defendants, or they are sufficient for none of them. The relevant arguments will be common across the Surety Defendants. The same is true of the remaining two Trade Association Defendants (*id.*, ¶¶ 127 – 135, 143 – 150) and the two Bail Agent Defendants (*id.*, ¶¶ 371 – 382).

IV. BRIEFING SCHEDULE AND PAGE LIMITS REGARDING PLAINTIFFS' MOTION TO LIFT DISCOVERY STAY

The Court set the following briefing schedule for Defendants' previous Motion to Stay Discovery: Plaintiffs' opposition was due 7 days later, and Defendants' reply was due 3 days thereafter. (Dkt. 23.) Plaintiffs asked Defendants if they would follow the same schedule. Harvey Decl., Ex. A at 4 (May 14, 2020 email from Dean Harvey). Defendants refused, and said they would proceed under the Local Rules. *Id.* at 3 (May 15, 2020 email from Beatriz Mejia).

Plaintiffs have no objection to following a briefing schedule as set by the Local Rules (14 days for an opposition, 7 days for a reply). Plaintiffs suggest the following page limits (Plaintiffs' Motion to Lift the Discovery Stay is 9 pages): 10 pages to oppose and 5 pages to reply.

1 Dated: May 18, 2020

Respectfully submitted,

2 /s/ Dean M. Harvey

3 Dean M. Harvey (SBN 250298)

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DATED: May 18, 2020

/s/ Dean M. Harvey
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